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C O N F I D E N T I A L SECTION 01 OF 02 JAKARTA 013603

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DEPT FOR EAP/MTS, INL FOR BOULDIN  
DOJ FOR CTS THORNTON, AAG SWARTZ, OPDAT FOR  
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TAGS: [PREL](#) [PGOV](#) [KJUS](#) [PCRM](#) [KTIA](#) [ID](#)  
SUBJECT: CONSTITUTIONAL COURT DECLARES ANTI-CORRUPTION  
COURT UNCONSTITUTIONAL

Classified By: Political Officer Adam West for reasons 1.4(b) and (d).

#### Summary

11. (U) In a controversial decision, on December 19 the Constitutional Court of Indonesia (CC) ruled that the legal provision which created the Anti-Corruption Court was unconstitutional, but allowed the court to continue functioning for a period of three years. The overturned provision was part of the 2002 law which created the Corruption Eradication Commission (KPK). The decision was reportedly based on the Constitutional Court's finding that suspects tried for corruption in the Anti-Corruption Court were treated differently from suspects facing the same charges in the regular court system, thus creating a situation of legal uncertainty for the accused. However, press reports indicate the decision allows for the Anti-Corruption Court to continue operating for a period of three years so that ongoing cases will not be affected. The decision sparked a range of reactions from legal experts, anti-corruption activists and GOI officials. USAID is forming a task force to assist Parliament and the KPK in developing draft legislation to restore the Court's permanent status. Although the KPK appears sanguine about the impact of the decision on its ongoing investigations, the decision almost certainly represents a setback to the GOI's anti-corruption efforts. End Summary.

#### The Decision

12. (U) The Indonesian Constitutional Court (CC) on December 19 overturned the legal provision authorizing the creating of the Anti-Corruption Court. The Court was created in 2002 to work in tandem with the Corruption Eradication Commission (KPK), the GOI's premier anti-corruption body. Since then, the Court has convicted some 14 high profile individuals on corruption charges, including one former Provincial Governor and a former Cabinet Minister. The suit was brought by two men previously convicted by the Court, who claimed that the special court operated by different procedures and handed out tougher penalties than the regular court system, thereby creating a dual system in which suspects charged with violating anti-corruption laws were treated differently depending on which court handled their case. The judges on the CC reportedly agreed, ruling that the Court was unconstitutional, but adding that the Court could continue to function for a period of three years to give Parliament time to develop a new legislative basis for the Court's existence.

13. (U) While the media has focused on the issue of the Anti-Corruption Court, other aspects of the CC's decision are notable. For one, the CC rejected the plaintiff's call for abolishment of the entire KPK. Additionally, the CC reportedly upheld the authority of the KPK to conduct wiretapping during its investigations, although the decision did call for new regulations to stipulate when and how wiretaps can be used. (The CC has not yet released its full written decision.)

#### The Impact

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14. (C) The CC's decision has generated strong reactions from Indonesian observers. Rafendi Djamin, Coordinator for the anti-corruption NGO Human Rights Working Group, told us that the decision will hurt the GOI's anti-corruption efforts and speculated that it was based on political rather than legal considerations. (Note: This charge has been leveled against a number of recent CC decisions - see septel.) The decision to allow the court three more years of life has also generated significant controversy, with some legal experts claiming that the CC lacks the authority to extend the life of an institution that is found to be unconstitutional. Some prominent observers have called for a Presidential Order (Perpu) to re-authorize the court's existence immediately, while Djamin and others have called on Parliament to make drafting a new law for the court a priority. The GOI, however, does not view the issue with the same urgency. The Yudhoyono administration reportedly has resisted calls for a Perpu, stating only that it is studying various options. KPK Chairman Taufiqurrahman Ruki also publicly rejected the need for a Perpu, telling the press that the CC's decision to

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grant the court three more years is a sufficient legal basis for the court to continue operating. Privately, KPK Deputy Chief Amien Sunaryadi told us he is not concerned about the decision and is confident that the cases currently being prepared by the KPK will continue to be tried in the Court as before. As for the chances of new legislation being enacted soon, one member of Parliament told us it was "doubtful" that anything would be enacted next year.

15. (U) USAID is setting up a task force to assist lawmakers and the KPK in developing new draft legislation to restore the Court's status on a permanent basis. The task force will operate under the auspices of USAID's Indonesian Anti-Corruption and Commercial Court Enhancement project (In-ACCE). The project provides aid to the Anti-Corruption Court to improve Court functions in case management, financial and budgetary planning, and management of information technology and human resources.

16. (C) Comment: Although the CC has not yet released a full opinion explaining its reasoning, the decision represents a setback for SBY's anti-corruption drive. It will certainly add fuel to the internal debate within the GOI between anti-corruption advocates like KPK Vice Chairman Erry Hardjapamekas and those who, like Vice President Kalla, claim the anti-corruption drive is inhibiting the efficient functioning of the bureaucracy. The KPK has achieved some momentum with the convictions won to date, and GOI officials at all levels are now significantly more aware of the potential consequences of corrupt behavior. KPK officials appear confident that they can continue to successfully investigate and prosecute cases. However, a lengthy effort in Parliament to create a new legal foundation for the Anti-Corruption Court could prove a major distraction to the KPK's efforts. At the very least, the CC's decision adds a new layer of complexity to the already highly politicized anti-corruption environment.

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